

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)



Applicant's or agent's file reference 21023WO	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/EP 03/08768	International filing date (day/month/year) 06.08.2003	Priority date (day/month/year) 06.08.2002
International Patent Classification (IPC) or both national classification and IPC A23L3/00		
Applicant DSM IP ASSETS B.V.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

 These annexes consist of a total of sheets.

3. This report contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application

Date of submission of the demand 09.01.2004	Date of completion of this report 26.11.2004
Name and mailing address of the international preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Authorized Officer Boddaert, P Telephone No. +31 70 340-3471 

**INTERNATIONAL PRELIMINARY
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International application No. PCT/EP 03/08768

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17):*

Description, Pages

1-6 as originally filed

Claims, Numbers

1-12 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

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**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	12
	No: Claims	1-11
Inventive step (IS)	Yes: Claims	12
	No: Claims	1-11
Industrial applicability (IA)	Yes: Claims	1-12
	No: Claims	

2. Citations and explanations

see separate sheet

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Re Item V

Reference is made to the following documents :

D1: EP-A-1068809
D2: EP-A-0867124
D3: US-A-3050401
D4: GB-A-1037799
D5: Derwent WPI; AN: 2000-404150(JP(A) 2000139334)
D6: GB-A-869693
D7: AU-734084

1. The present application does not meet the requirements of Article 33(2) PCT because the subject-matter of claims 1-11 is not new.

Remark : The terms 'mould-like appearance' and 'can be stored for 60 days ...' used in claims 1,8,11 do not appear to have a precise meaning or define the subject-matter in terms of the result to be achieved, contrary to Article 6 PCT. These unclear features have not been taken into account for assessing novelty.

a. The document D1 discloses (par.27-30,36-39; claims) a dry antifungal composition comprising natamycin and flour or starch, dusted onto a food product such as cheese or sausage. The coating density is inherent, considering the natamycin concentration disclosed.

The subject-matter of claims 1-11 is therefore not new.

b. The document D2 discloses (p.3 l.9-11 l.20-24; claims 1-4,11-16) a powder antifungal composition (natamycin, nystatin, lucensomycin or amphotericin B) coated on the surface of a cheese or sausage.

The subject-matter of claims 1-3,5-11 is therefore not new.

c. The document D3 discloses (col.2 l.44-58; col. l.2-15 l.39-43; ex.1-4) coating the surface of a processed meat product with a powdery dusting mix, comprising a polyene fungicide (nystatin) and starch.

The subject-matter of claims 1,2,4,5,8-11 is therefore not new.

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d. The document D4 discloses (p.2 l.86-104 ; ex. 1-3 ; claims) coating of cheese with an antifungal powder dust (sorbic acid). Inhibiting mold for long shelf life.

The subject-matter of claims 1-3,8-11 is therefore not new.

e. It appears documents D5 (abstract) and D6 (p.2; claims) and D7 also deprive claims 1-11 of novelty.

2. The subject-matter of claim 12 does not appear to be disclosed in any of the cited documents.

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